

**FILED**

**JUN 16 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ALICIA CHAVEZ-GONZALEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-72009

Agency No. A78-076-400

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted June 12, 2006<sup>\*\*</sup>

Before: KLEINFELD, PAEZ and BERZON, Circuit Judges.

Alicia Chavez-Gonzalez, a native and citizen of Mexico, petitions pro se for review of an order of the Board of Immigration Appeals (“BIA”) dismissing her

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

appeal from an immigration judge's order denying her application for cancellation of removal. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. We review due process claims de novo, *see Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005), and we dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the agency's determination that Chavez-Gonzalez failed to demonstrate "exceptional and extremely unusual hardship." *Id.* at 929 (whether an alien demonstrated exceptional and extremely unusual hardship is not reviewable under 8 U.S.C. § 1252).

To the extent Chavez-Gonzalez raises a due process challenge to the hardship determination, we lack jurisdiction because her claims are not colorable. *See Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001) (indicating that an applicant may not create the jurisdiction Congress chose to remove simply by cloaking an abuse of discretion argument in constitutional garb).

We do not consider whether Chavez-Gonzalez established continuous physical presence and good moral character because her failure to establish the requisite hardship is dispositive. *See* 8 U.S.C. § 1229b(b)(1); *Romero-Torres v. Ashcroft*, 327 F.3d 887, 889 (9th Cir. 2003) (noting that an applicant must

establish continuous physical presence, good moral character and hardship to qualify for relief).

**PETITION FOR REVIEW DISMISSED in part; DENIED in part.**